

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff(s),

CASE NUMBER: 05-80025

HONORABLE VICTORIA A. ROBERTS

v.

D-1 TIMOTHY DENNIS O'REILLY,

Defendant(s).

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**ORDER**

This matter is before the Court on Timothy O'Reilly's "Motion to Preclude the Government from using the Nix-Bey Recording to Show Lack of Remorse and/or Future Dangerousness." (Doc. #599). O'Reilly says his bragging in jail six years ago does not show he currently lacks remorse for killing Norman Anthony Stephens, and the idea that he constitutes a danger in the future is "illusory." *See United States v. Concepcion Sablan*, 555 F.Supp.2d 1205 (D. Colo. 2007).

Oral argument was heard on August 5, 2010.

O'Reilly's motion is **GRANTED IN PART**.

On December 30, 2009, this Court held:

O'Reilly's taped statements to another inmate, Barron Nix-Bey, describing how Norman Stephens was killed during the Dearborn Credit Union robbery, his lack of remorse for killing Stephens, and his statement that he is willing to kill in the future, is "lack of remorse" evidence that is probative of O'Reilly's future dangerousness. These statements are admissible to support the "future dangerousness" factor.

(Doc. #432).

The Government may still introduce the Nix-Bey recording as part of its future dangerousness evidence, but the entire recording is not admissible. The Government must ensure that the Nix-Bey recording that is played to the jury during the penalty phase is that part which addresses O'Reilly's lack of remorse for killing Mr. Stephens, including O'Reilly's statement that he would have killed co-Defendant Earl Johnson if he had known how Johnson was going to handle his share of the proceeds.

The Government must exclude the part of the Nix-Bey recording that contains O'Reilly's statements regarding robberies he plans to commit when released from prison, and statements about other witnesses O'Reilly plans to kill when released from prison. These statements do not relate to O'Reilly's future dangerousness in the prison setting. See Order dated February 1, 2008 (Doc. #309).

**IT IS ORDERED.**

s/Victoria A. Roberts  
Victoria A. Roberts  
United States District Judge

Dated: August 6, 2010

The undersigned certifies that a copy of this document was served on the attorneys of record by electronic means or U.S. Mail on August 6, 2010.

s/Linda Vertriest  
Deputy Clerk